

**BILL #:** CS/HB 5611      PCB GOA 10-03    Department of Management Services  
**SPONSOR(S):** Government Operations Appropriations Committee and Hays  
**TIED BILLS:**                                 **IDEN./SIM. BILLS:**

## SUMMARY ANALYSIS

- Establishes DMS as a Governor and Cabinet agency with the authority to appoint an executive director, subject to confirmation by the Senate.
- Provides an appropriation to re-establish certain management positions within DMS, which positions are subject to Senate confirmation.
- Eliminates the Council on Efficient Government. *Note: The Council on Efficient Government was repealed by CS/SB 2386, which was approved by the Governor on May 28, 2010 (chapter 2010-151, L.O.F.).*
- Eliminates the State Employee Wellness Council.
- Delays expiration of provisions imposing a \$3 surcharge on certain offenses and traffic violations, the proceeds of which are deposited into the State Agency Law Enforcement Radio System Trust Fund.
- Authorizes DMS to transfer revenues from vendor transaction fees collected by the department for use of its statewide electronic procurement and information services system to the Department of Financial Services to support statewide purchasing operations performed in conjunction with DMS.
- Authorizes DMS to transfer \$320,000 to the Department of Environmental Protection for the creation of a comprehensive database of state-owned real property.
- Requires electronic filing of information by parties represented by attorneys in hearings held under the Division of Administrative Hearings Adjudication of Disputes Program and in the Workers' Compensation Appeals Program. Parties not represented by attorneys are encouraged, but not required, to file documents electronically.
- Establishes statewide wireless device utilization standards for agencies to use in determining employee assignment of wireless communication devices.
- Requires agencies to procure for wireless devices and services using SUNCOM Network Services.
- Directs DMS to submit a plan to the Legislature to create, administer, and maintain a centralized fleet of all state-owned motor vehicles.
- Directs DMS to coordinate with all state agencies prior to submitting a plan to the Governor, Cabinet, and Legislature to centralize all real estate operations and maintenance.

DATE: 11/07/2010

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Overview of the Florida Government Accountability Act**

The Florida Government Accountability Act<sup>1</sup> (Act) creates an agency sunset review process to determine if a public need exists for the continuation of a state agency, its advisory committees, or its programs. The Act requires each agency and related advisory committees to be reviewed by the Legislature according to a prescribed 10 year schedule. If the Legislature does not take action to reenact the agency or its advisory committees prior to the review date, the agency will continue to be subject to an annual sunset review until the Legislature enacts legislation relating to the agency's abolition, continuation, or reorganization.

Under current law, the Department of Management Services must be reviewed by July 1, 2010.<sup>2</sup>

##### **Organization of the Department of Management Services and Staffing**

###### Background

Section 20.22, F.S., creates the Department of Management Services (DMS or department). The head of DMS is the Secretary of Management Services, who is appointed by the Governor, subject to confirmation by the Senate.<sup>3</sup> DMS was created from two other agencies.

Following a 1968 constitutional revision, the Legislature enacted the "Reorganization Act of 1969," which established the Department of Administration (DOA) and the Department of General Services (DGS). The DOA consolidated budget, state planning, personnel, and retirement functions previously scattered among various ex-officio boards and agencies, most of which were under the Cabinet. The DGS, which was headed by the Governor and Cabinet, centralized the following duties, to be provided to all state agencies: purchasing and contract negotiations; electronic data processing; the structure and sale of bond issues; building design, construction, and maintenance; maintenance of a state motor and executive aircraft pool; federal and state surplus property management; and the design and maintenance of a state communications network. The building construction and maintenance, purchasing, and surplus property functions all existed under Cabinet boards prior to the reorganization. The motor pool and communication functions were newly established as a result of the reorganization.<sup>4</sup>

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<sup>1</sup> See ss. 11.901-11.920, F.S.

<sup>2</sup> Section 11.905(2)(c), F.S.

<sup>3</sup> Section 20.22(1), F.S.

<sup>4</sup> Interim Project Report 98-27, *Review of the Role of a Central Services Agency in a Decentralized Environment*, Senate Committee on Governmental Reform and Oversight (October 1998).

The Department of Management Services was created effective July 1, 1992. The DOA was abolished and its duties were distributed among other agencies. The DGS was renamed the Department of Management Services.

#### Effect of Bill

The bill reestablishes the Department of Management Services under the Governor and Cabinet. It requires the Governor and Cabinet to appoint an executive director, subject to confirmation by the Senate.

The bill also authorizes 18 full-time executive and lower level management positions across different programs, appropriates a lump sum of \$2,185,746 in recurring trust fund authority from multiple trust funds, and provides salary rate of 1,658, 961 for the purpose of implementing the provisions of s. 20.22, F.S. These positions were authorized, funded and had salary rate in prior years' appropriations, but were eliminated in the General Appropriations Act for Fiscal Year 2010-11. Specifically:

- Effective July 1, 2010, the following additional Senior Management Service positions are reauthorized:
  - Executive Director.
  - Deputy Executive Director.
  - Chief of Staff.
  - General Counsel.
  - Legislative Affairs Director.
  - Inspector General.
  - Director of the Division of Facilities Management.
  - Director of the Division of State Purchasing.
  - Public Information Administrator.
  - Director of Specialized Services.
- Effective July 1, 2010, the following additional Selected Exempt Service positions are reauthorized:
  - Deputy Director of Facilities Management and Building Construction.
  - Chief of Operations and Maintenance – Facilities Management.
  - Chief of Real Property – Facilities Management.
  - Projects Management Administrator – Facilities Management.
  - Appraiser Administrator – Facilities Management.
  - Deputy Chief of Regional Facilities – Facilities Management.
  - Deputy Chief of Tallahassee Facilities – Facilities Management.
  - Systems Programming Administrator / Chief Information Officer.

No later than July 15, 2010, DMS must submit a budget amendment specifying the allocation of the above positions by budget entity and trust fund. In addition, such positions must be filled initially by majority approval of the Governor and Cabinet, subject to confirmation by the Senate. Incumbents in such positions on March 1, 2011, also are subject to Senate confirmation. These provisions expire June 30, 2012.

### **Florida State Employee Wellness Council**

#### Background

In 2006, the Florida State Employee Wellness Council (council) was created to advise DMS on health care education for employees and to assist in developing minimum benefits for all health care providers when providing age- and gender-based wellness benefits. The council is composed of nine members appointed by the Governor.

As part of the sunset review of DMS, the Office of Program Policy Analysis and Government Accountability recommended abolishing the council because the council does not appear to be fulfilling

its statutory mission.<sup>5</sup> Additionally, council duties related to wellness programs have been assigned to other state entities. For example, the Department of Health is required to collaborate with other state agencies to promote healthy lifestyles of state employees, and the Governor's Council on Physical Fitness was established in 2007 with the goal of developing a state plan of action to increase the physical activity of Floridians.

#### Effect of Bill

The bill repeals the Florida State Employee Wellness Council.

### **Council on Efficient Government**

#### Background

The Council on Efficient Government<sup>6</sup> (CEG) was created in 2006 to employ a standard process for reviewing agency business cases to outsource, review and issue advisory reports on such business cases, and develop standards for use by agencies in evaluating business cases to outsource in compliance with the "Florida Efficient Government Act." The CEG was created in reaction to various audits and reports that raised legislative concerns about agency attempts to outsource or privatize state functions.<sup>7</sup> The CEG consists of seven members appointed by the Governor.<sup>8</sup> In fiscal year (FY) 2006-07, the CEG developed business case standards for agencies, evaluated 27 agency business cases totaling \$62 million, drafted the 2007 CEG Annual Report, and established Project Management Professional training for state agency purchasing staff.<sup>9</sup> In FY 2008-09, CEG staff reviewed 23 business cases with a total value of approximately \$225 million and provided training on the development and submission of business cases.<sup>10</sup>

#### Effect of Bill

The bill repeals the Council on Efficient Government. Agency outsourcing proposals will continue to be submitted to the Governor and Legislature for review and approval.

*Note: The Council on Efficient Government was repealed by CS/SB 2386, which was approved by the Governor on May 28, 2010 (chapter 2010-151, L.O.F.).*

### **Electronic Filing and Service at Division of Administrative Hearings**

#### Background

The Division of Administrative Hearings (DOAH) is made up of the Office of Administrative Law Judges (ALJs) and the Office of the Judges of Compensation Claims (OJCCs). ALJs hear administrative disputes under ss. 120.56 and 120.57, F.S., relating to disputes between private citizens and organizations and agencies of the state. OJCCs conduct mediation conferences, pre-trial and final hearings to resolve and/or adjudicate disputed workers' compensation claims pursuant to s. 440.192, F.S.

Both the OJCCs and the ALJs currently allow electronic filing and traditional paper and fax filing. The number of electronically filed documents has grown steadily since the implementation of electronic filing. The ALJs received 18,230 electronically filed documents, and the JCCs received 430,548 electronically filed documents in FY 2008-09.<sup>11</sup> All documents received by DOAH are stored in an

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<sup>5</sup> Department of Management Services Advisory Committees Assessment, Office of Program Policy Analysis and Government Accountability, Report No. 08-S11 (December 2008).

<sup>6</sup> See s. 287.0573, F.S.

<sup>7</sup> For background on audit reports on agency outsourcing efforts through 2005, see Senate Staff Analysis by the General Government Appropriations Committee on CS/CS/SB 1146 (2005 Regular Session).

<sup>8</sup> The membership for the CEG is comprised of the following: the DMS secretary, who serves as chair; one cabinet member other than the Governor, or designee; two heads of executive branch agencies; and three members from the private sector subject to confirmation by the Senate and who, collectively, have experience with purchasing, increasing operational efficiency, and implementing complex projects in the private-sector business environment.

<sup>9</sup> Department of Management Services' Sunset Review Report, at 14.

<sup>10</sup> Council on Efficient Government, *2009 Annual Report*, at 5.

<sup>11</sup> Division of Administrative Hearings, *Thirty-Sixth Annual Report*, at 7 (February 1, 2010).

electronic database; and paper documents received by DOAH are scanned by employees and uploaded to the database.<sup>12</sup>

Internal policy at the Adjudication of Disputes Program dictates that only parties who specifically sign up for the electronic filing program are served documents electronically. As a result, a relatively low number of documents (approximately 26 percent) are e-served by the ALJs. Conversely, approximately 99 percent of documents are e-served by the OJCC because this program electronically serves to any party who has provided an e-mail address to the judge's staff.

Under s. 120.53(1)(a)2.b., F.S., agencies must maintain and make available for the public an index of all final orders and agency rules. As an alternative, the statute allows agencies to electronically transmit those documents to DOAH for indexing on its electronic database. The Department of Agriculture and Consumer Services and the Department of Environmental Protection currently use DOAH to comply with the mandates of s. 120.53(1)(a)2.b., F.S.

#### Effect of Bill

The bill creates section 120.585, F.S., to require any document filed with DOAH, by an attorney, to be submitted through electronic means. Any party not represented by an attorney is encouraged to file any document through DOAH's website. The bill amends ss. 57.111, 120.54, 120.56, 120.569, 120.57, 440.192, 440.25, 440.29, 440.45, 552.40, 553.73, and 961.03, F.S., to provide for electronic procedures in administrative proceedings. There is no charge to register for DOAH's electronic filing service.

The bill also provides for application of certain orders issued by a chief circuit judge or the Supreme Court to any district office of the OJCC. Whenever a circuit court in a county is closed by official action of the chief circuit judge or a designated official due to weather or other disaster-related emergency, any district office of the OJCC that is located within that county also must close. Such office will remain closed for the duration of the emergency closure ordered for that circuit. Also, any tolling order issued by the Supreme Court pertaining to matters pending before the circuit or county courts apply to all proceedings pending in any district office of the OJCC located within a county designated by such tolling order. All time limits for acts required by law and subject to the jurisdiction of the OJCC must be tolled as set forth in the order of the Supreme Court. A tolling order of the Supreme Court must be considered authoritative upon the posting of the order to the court's website or other public dissemination, whichever occurs earlier.

### **Statewide Wireless Communication Utilization**

#### Background

Chapter 2009-15, L.O.F., directed the Office of Program Policy Analysis and Government Accountability (OPPAGA), in consultation with DMS, to develop recommendations regarding the prudent issuance of state-owned wireless communication devices, including telephones, personal digital assistants, and other electronic devices. OPPAGA found that there was no single-source of information regarding state-owned wireless devices and, after interviewing executive agencies, found that agencies currently have more than 40,000 wireless devices and spend approximately \$17 million annually for their operation.<sup>13</sup>

DMS has established state term contracts for the purchase of wireless devices and services, as well as an alternative source contract with a different provider. The state term contract enables agencies to take advantage of free cellular phones and pay only for the minutes used. The alternative source contract provides an across the board discount of 25 percent for wireless services. OPPAGA found that state agencies with the highest cellular telephone expenditures were making limited purchases using DMS cellular phone contracts.<sup>14</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Options for Reducing State Agency Costs for Cellular Telephones and Other Wireless Devices*, Office of Program Policy Analysis and Government Accountability (March 3, 2009).

<sup>14</sup> *Id.*

OPPAGA made several recommendations to ensure prudent management of wireless communication devices including recommending that the Legislature:

- Establish statewide policies to limit the use of wireless devices to employees with job responsibilities that match device capabilities.
- Require agencies to monitor employee use and obtain cost effective services plans.
- Ensure procurement practices use the most cost effective service.
- Direct agencies to report wireless device costs via agency legislative budget requests.

#### Effect of Bill

The bill requires agencies to limit assignment of wireless communication devices only to those employees who, as part of their job responsibility, must:

- Be immediately available to citizens, supervisors, or subordinates;
- Be available to respond to emergency situations;
- Be available to receive calls outside of regular working hours;
- Have access to the technology in order to productively perform job duties in the field; or
- Have limited or no access to a standard telephone, or have no ability to use a cellular phone, if needed.

The bill provides that procurement for wireless communication devices and services must be through SUNCOM Network Services, unless otherwise approved by DMS. Agencies that wish to procure services through an alternative method must provide a cost benefit analysis and reason for deviating from the state term contract and must submit such analysis to DMS for approval.

The bill requires agencies to audit wireless communication devices for personal use and requires reimbursement from employees. It also requires agencies to submit as part of the legislative budget request an annual inventory of wireless communication devices and expenditures, a list of job classifications assigned a wireless device, and the steps the agency has taken to contain costs.

### **Centralized Fleet Management of State-Owned Motor Vehicles**

#### Background

Each state agency operates an individual pool of state-owned motor vehicles. The majority of these vehicles remain in an agency pool that is available for general use by agency employees.

Current law requires agency heads to comply with certain criteria when assigning motor vehicles.<sup>15</sup> Such criteria include the authorization for an agency head to assign state-owned vehicles to employees who are projected to drive a minimum of 10,000 miles annually on official business.<sup>16</sup>

Data from the Department of Management Services' Equipment Management Information System for calendar year 2009 showed that agencies own approximately 18,237 cars and light trucks. Of these, approximately 30 percent were used for law enforcement purposes—leaving 12,687 vehicles operated for general agency use. A review of these vehicles by OPPAGA showed that 63 percent of these vehicles were driven less than 10,000 miles during the year. In addition, 2,939 of these vehicles were assigned to an individual, but nearly 45 percent of assigned vehicles were not driven the statutorily required 10,000 miles.<sup>17</sup> In contrast, 654 employees were reimbursed for driving personal vehicles more than 10,000 miles on state business during fiscal year 2008-09.<sup>18</sup>

Several states have implemented a centralized fleet of state-owned motor vehicles in an effort to provide cost savings through efficiencies and disposal of surplus vehicles.

#### Effect of Bill

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<sup>15</sup> See s. 287.17(4), F.S.

<sup>16</sup> Section 287.17(4)(a), F.S.

<sup>17</sup> *Vehicle Use by State Agency*, Office of Program Policy Analysis and Government Accountability (March 11, 2010).

<sup>18</sup> *Id.*

The bill directs DMS to prepare a plan to create, administer, and maintain a centralized fleet of state-owned motor vehicles. DMS must submit the plan to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet by November 1, 2010.

The plan must provide a method for: assigning and administering motor vehicles to state agencies and employees, managing a fleet of motor vehicles for short-term use, charging state agencies for use, purchasing necessary motor vehicles, repairing and maintaining motor vehicles, monitoring the use of motor vehicles, maintaining records, disposing of motor vehicles that are no longer necessary or that are not used effectively enough to establish cost savings, and determining when it is cost-efficient to use a third party vehicle rather than a state-owned car. In developing the plan, DMS must compare the costs and benefits of contracting with a third party vendor for the operation of a centralized fleet.

## **Real Estate Leasing and Facilities Management**

### Background

The facilities program primarily implements those provisions in the Florida Statutes related to the state's facility needs. The program provides development and management oversight of state-owned buildings from development of facilities to management of existing buildings as well as leasing oversight of state agencies, including private sector leasing for economical use of state-owned space. The facilities program operates under two trust funded budget entities, the Architects Incidental Trust Fund supporting construction-related activities, and the Supervision Trust Fund supporting the operation and maintenance of state-owned buildings and statewide leasing of privately-owned space.

Facilities Management is responsible for the day-to-day oversight, operations, and management of over 7.2 million gross square feet in the Florida Facilities Pool.<sup>19</sup> This includes 68 facilities and their associated grounds statewide. State Facilities Inventory is responsible for developing and maintaining an automated inventory and assessment of the condition of these facilities, as well as all other state-owned facilities of the executive and judicial branches that are more than 3,000 square feet.<sup>20</sup> The State Facilities Inventory database consists of 3,953 state-owned buildings in excess of 57.2 million square feet.<sup>21</sup>

Lease Management provides administration for more than 8.3 million square feet of space leased from private industry and other governmental entities, which totals more than \$150 million in lease payments annually.<sup>22</sup> Lease Management also provides oversight for more than 5.7 million net square feet of leased space in the Florida Facilities Pool<sup>23</sup> and oversees the allocation of 26,159 parking spaces statewide.<sup>24</sup>

In 2003, DMS undertook what it called the Workspace Management Initiative, which consisted of three components- Workspace Standards, Centralized Leasing, and Asset Management. The Centralized Leasing component relied upon an Executive Order<sup>25</sup> for authority to require agencies to use DMS as the state's central leasing agent. DMS signed a contract with a tenant broker in October of 2003, though there was no explicit statutory authority for using a tenant broker to negotiate leases on behalf of DMS or any other agency. In 2007, the Legislature authorized agencies to use invitations to negotiate to obtain leased space, and to procure the services of a tenant broker, whose services may be used by an agency in conjunction with a competitive solicitation for leased space.<sup>26</sup> DMS subsequently has implemented a strategic leasing plan for state agencies, and has procured the services of three tenant brokers for use by state agencies.

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<sup>19</sup> [http://dms.myflorida.com/business\\_operations/real\\_estate\\_development\\_management/facilities\\_management](http://dms.myflorida.com/business_operations/real_estate_development_management/facilities_management) (last visited October 13, 2010).

<sup>20</sup> Section 216.0152(1), F.S.

<sup>21</sup> State Facilities Inventory 2010 Annual Report, Department of Management Services, Agency Summary Table at 6.

<sup>22</sup> *Strategic Leasing Plan and Master Leasing Report*, Department of Management Services, at 5 (September 15, 2010).

<sup>23</sup> *Id.*

<sup>24</sup> [http://dms.myflorida.com/business\\_operations/real\\_estate\\_development\\_management/facilities\\_management/parking\\_services](http://dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/parking_services) (last visited October 13, 2010).

<sup>25</sup> Executive Order Number 04-118.

<sup>26</sup> Chapter 2007-220, L.O.F.

### Effect of Bill

The bill requires DMS to coordinate with all state agencies to identify all existing resources within each agency related to real estate leasing and facilities operations and maintenance. Agencies must submit such information to DMS no later than August 1, 2010. DMS must submit a plan for centralizing within the department all real estate leasing and facilities operations and maintenance to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet by September 1, 2010. Each agency's legislative budget request for FY 2011-2012 must include such information as a transfer to DMS.

## **Database of State-Owned Real Property**

### Background

During the 2009 Regular Session, the Legislature directed DMS to create, administer, and maintain a comprehensive database of all state-owned real property and directed the agency to create a plan to compile the information.<sup>27</sup> The agency submitted the plan to the Senate, House of Representatives, and Governor in January 2010, with a subsequent addendum in February 2010.

Through its research, the department found that independent legislation over the last three decades has led to disparate public land databases—creating redundancy, as well as gaps in information.<sup>28</sup> In its final report to the Legislature and Governor, DMS outlined three options for meeting the requirements outlined by the 2009 Legislature:

- 1) Outsource the implementation and management of the state-owned real property database;
- 2) Develop a new database in DMS that meets requirements set forth in law; or
- 3) Create a new database in DMS or the Department of Environmental Protection (DEP) that consolidates existing databases to meet the requirements in law.

In February 2010, DMS recommended to the Legislature that leveraging an existing DEP property database, the Lands Information Tracking System, would provide the best option for creating a database of all state-owned real property. The comprehensive database would provide the opportunity to retire two existing DEP systems in the near future and could be accomplished within currently allocated resources.

### Effect of Bill

The bill authorizes DMS to transfer \$320,000 from the Supervision Trust Fund to DEP for the creation of a comprehensive database of state-owned real property.

## **Miscellaneous Provisions**

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<sup>27</sup> Chapter 2009-77, L.O.F.

<sup>28</sup> There are several statewide databases for state-owned land including:

- The Department of Environmental Protection (DEP) Public Lands Inventory – a database of all public lands containing more than 67,000 state-owned parcels.
- The DEP Florida Statewide Public Lands Inventory – a database of all public lands captured directly from county property appraisers.
- The DEP Board of Trustees Land Document System – a listing of state-owned lands owned by the Board of Trustees.
- The DEP Lands Information Tracking System (LITS) – currently under development, this database will contain funding, data, and mapping information related to lands acquired from Florida Preservation 2000 or Florida Forever.
- The Department of Revenue Tax Rolls – an inventory of all private and public lands provided by county property appraisers to ensure counties meet minimum assessment standards.
- The DMS State Facilities Inventory – includes condition information on more than 3,800 state-owned buildings.
- The Department of Financial Services Risk Management Database – includes more than 20,000 state-owned buildings and structures for insurance assessments.



The bill delays, from July 1, 2012 to July 1, 2017, expiration of provisions imposing a \$3 surcharge on certain offenses and traffic violations, the proceeds of which are deposited into the State Agency Law Enforcement Radio System Trust Fund.

The bill authorizes DMS to transfer revenues from vendor transaction fees collected by the department for use of its statewide electronic procurement and information services system to the Department of Financial Services to support statewide purchasing operations.

Finally, the bill directs the Division of Statutory Revision of the Office of Legislative Services to prepare a reviser's bill for consideration by the 2011 Regular Session of the Legislature to conform the Florida Statutes to changes made by this bill.

**B. SECTION DIRECTORY:**

Section 1 amends s. 20.22, F.S., revising the governance of the Department of Management Services (DMS).

Section 2 amends s. 57.111, F.S., providing for electronic filing and transmission procedures for certain actions, proceedings, and petitions.

Section 3 amends s. 120.56, F.S., providing for electronic filing and transmission procedures for certain actions, proceedings, and petitions.

Section 4 amends s. 120.569, F.S., providing for electronic filing and transmission procedures for certain actions, proceedings, and petitions.

Section 5 amends s. 120.57, F.S., providing for electronic filing and transmission procedures for certain actions, proceedings, and petitions.

Section 6 amends s. 552.40, F.S., providing for electronic filing and transmission procedures for certain actions, proceedings, and petitions.

Section 7 amends s. 553.73, F.S., providing for electronic filing and transmission procedures for certain actions, proceedings, and petitions.

Section 8 amends s. 961.03, F.S., providing for electronic filing and transmission procedures for certain actions, proceedings, and petitions.

Section 9 repeals s. 110.123(13), F.S., relating to the creation and duties of the Florida State Employee Wellness Council.

Section 10 amends s. 120.54, F.S., requiring a petitioner requesting an administrative hearing to include the petitioner's e-mail address and requiring the request for administrative hearing by a respondent to include the e-mail address of the party's counsel or qualified representative.

Section 11 creates s. 120.585, F.S., requiring an attorney to use electronic means when filing a document with the Division of Administrative Hearings; encouraging a party not represented by an attorney to file documents by electronic means through the division's website.

Section 12 amends s. 216.023, F.S., requiring each agency head to provide an annual inventory containing specified information of all wireless devices and expenditures.

Section 13 creates s. 282.712, F.S., creating requirements for the use of wireless communication devices by agencies.

Section 14 amends s. 287.05721, F.S., conforming provisions to the elimination of the Council on Efficient Government.

Section 15 repeals s. 287.0573, F.S., relating to creation of the Council on Efficient Government.

Section 16 amends s. 287.0574, F.S., conforming provisions to the elimination of the Council on Efficient Government.

Section 17 creates an unnumbered section of law requiring DMS to prepare a plan to centralize the fleet of state-owned motor vehicles and to submit the plan to the Governor, Cabinet, and Legislature by a specified date.

Section 18 amends s. 318.18, F.S., delaying the expiration of provisions imposing a surcharge on certain offenses and traffic violations, the proceeds of which are deposited into the State Agency Law Enforcement Radio System Trust Fund.

Section 19 amends s. 318.21, F.S., delaying the expiration of provisions imposing a surcharge on certain offenses and traffic violations, the proceeds of which are deposited into the State Agency Law Enforcement Radio System Trust Fund.

Section 20 amends s. 440.192, F.S., providing for electronic filing and transmission of petitions for benefits and other documents in workers' compensation benefits proceedings.

Section 21 amends s. 440.25, F.S., providing for electronic filing and transmission of petitions for benefits and other documents in workers' compensation benefits proceedings.

Section 22 amends s. 440.29, F.S., authorizing the Office of the Judges of Compensation Claims to adopt rules for certain purposes.

Section 23 amends s. 440.45, F.S., authorizing the Office of the Judges of Compensation Claims to adopt rules for certain purposes.

Section 24 amends s. 440.33, F.S., providing for the application of an order issued by the chief circuit judge to close the courts of the county or a tolling order issued by the Supreme Court to any district office of the Office of the Judges of Compensation Claims which is located within the same county in which the order of closure or tolling order applies; providing for the time limits applicable to the jurisdiction of the Office of the Judges of Compensation Claims to apply following such order.

Section 25 amends s. 766.305, F.S., authorizing the Division of Administrative Hearings to furnish by electronic means copies of certain petitions and orders relating to medical disciplinary reviews, claims, and awards.

Section 26 amends s. 766.309, F.S., authorizing the Division of Administrative Hearings to furnish by electronic means copies of certain petitions and orders relating to medical disciplinary reviews, claims, and awards.

Section 27 amends s. 766.31, F.S., authorizing the Division of Administrative Hearings to furnish by electronic means copies of certain petitions and orders relating to medical disciplinary reviews, claims, and awards.

Section 28 requires DMS to identify all resources relating to real estate leasing and facilities operations and maintenance within each state agency; requires a report to the Governor, Cabinet, and Legislature by a specified date; requires that the information be included within the agency's legislative budget request for the 2011-2012 Fiscal Year.

Section 29 creates an unnumbered section of law providing an appropriation and authorizing positions within DMS; requiring approval of the Governor and Cabinet and Senate confirmation for such positions; providing for repeal of the provisions by a date certain.

Section 30 authorizes DMS to transfer certain funds for the purpose of statewide purchasing operations.

Section 31 authorizes DMS to transfer certain funds for the creation of a comprehensive database of state-owned real property.

Section 32 provides a directive to the Division of Statutory Revision.

Section 33 provides an effective date of July 1, 2010, unless otherwise expressly provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See "Fiscal Comments" section.

#### **2. Expenditures:**

See "Fiscal Comments" section.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See "Electronic Filing with DOAH" under "Fiscal Comments" section.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See "Electronic Filing with DOAH" under "Fiscal Comments" section.

### **D. FISCAL COMMENTS:**

#### Organization of the Department of Management Services and Staffing

The bill authorizes 18 full-time executive and lower level management positions across different programs, appropriates a lump sum of \$2,185,746 in recurring trust fund authority from multiple trust funds, and provides salary rate of 1,658, 961 for the purpose of implementing the provisions of s. 20.22, F.S. These positions were authorized, funded, and had salary rate in prior years' appropriations, but were eliminated in the General Appropriations Act for Fiscal Year 2010-11. Specifically:

- Effective July 1, 2010, the following additional Senior Management Service positions are reauthorized:
  - Executive Director.
  - Deputy Executive Director.
  - Chief of Staff.
  - General Counsel.
  - Legislative Affairs Director.
  - Inspector General.
  - Director of the Division of Facilities Management.
  - Director of the Division of State Purchasing.
  - Public Information Administrator.
  - Director of Specialized Services.
- Effective July 1, 2010, the following additional Selected Exempt Service positions are reauthorized:

- Deputy Director of Facilities Management and Building Construction.
- Chief of Operations and Maintenance – Facilities Management.
- Chief of Real Property – Facilities Management.
- Projects Management Administrator – Facilities Management.
- Appraiser Administrator – Facilities Management.
- Deputy Chief of Regional Facilities – Facilities Management.
- Deputy Chief of Tallahassee Facilities – Facilities Management.
- Systems Programming Administrator / Chief Information Officer.

#### Electronic Filing and Services at the Division of Administrative Hearings (DOAH)

According to DOAH:

This bill will make it less costly for local governments, state agencies, small businesses, and private individuals to access DOAH: current requirements for certified mail or paper documents delivered by regular mail or courier would be changed to allow electronic filing of documents and electronic service of orders and notices by DOAH at a cost savings to the parties and to DOAH. Thus, the fiscal impact of this bill is positive.<sup>29</sup>

DOAH estimates it will save \$9,500 per year through electronic services of documents.<sup>30</sup>

#### Statewide Wireless Communication Utilization

The fiscal impact of statewide policies for the utilization of wireless communication devices is unknown but could potentially reduce individual agency costs associated with these services.

#### Centralized Fleet Management of State-Owned Motor Vehicles

Costs of preparing a plan to create, administer, and maintain a centralized fleet of state-owned motor vehicles, including a comparison of costs and benefits of contracting with a third-party vendor to do same, can be absorbed within the department's existing resources.

The fiscal impact of centralizing state-owned motor vehicles within the department is unknown but could potentially provide the opportunity for cost savings resulting from more efficient use and disposal of motor vehicles, as well as decreased administrative costs within agencies.

#### Real Estate Leasing and Facilities Management

Costs of preparing a plan for the centralization of all real estate leasing and facilities operations and maintenance within the department can be absorbed within the department's existing resources.

The fiscal impact of centralizing all real estate leasing and facilities operations and maintenance within the department is unknown but could potentially provide the opportunity for cost savings resulting from more efficient use and proper maintenance of state-owned buildings.

#### Database of State-Owned Real Property

The bill authorizes the department to transfer \$320,000 from the Supervision Trust Fund to the Department of Environmental Protection to help fund the creation of a comprehensive database of state-owned real property. Upon completion of the database, the Department of Environmental Protection estimates it will save approximately \$100,000 annually through the elimination of redundant databases.<sup>31</sup>

#### State Agency Law Enforcement Radio System Trust Fund

The bill delays expiration of provisions imposing a \$3 surcharge on citations for certain offenses and traffic violations, the proceeds of which are deposited into the State Agency Law Enforcement Radio

<sup>29</sup> Division of Administrative Hearings agency analysis of SB 2124 at 3 (March 2, 2010).

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Senate Bill 1804: Addendum to Final Report to the Legislature, Plan for a Comprehensive Database of State-owned Real Property*, Department of Management Services, at 3 (February 1, 2010).

System Trust Fund within the department for costs and expenses incurred for the statewide law enforcement radio system. As such, the trust fund will continue receiving the \$3 surcharge through July 1, 2017.

#### MyFloridaMarketPlace Vendor Transaction Fees

The bill authorizes the department to transfer revenues from vendor transaction fees it has collected for use of its statewide electronic procurement and information services system to the Department of Financial Services to fund statewide purchasing operations.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

##### 2. Other:

Section 6, Art. IV of the State Constitution states:

...The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except...[w]hen provided by law, confirmation by the senate...shall be required for appointment to or removal from any *designated statutory office*... (emphasis added)

*Black's Law Dictionary* (sixth edition) defines "office" to mean:

A right, and correspondent duty, to exercise a public trust. A public charge or employment. An employment on behalf of the government in any station or public trust, not merely transient, occasional, or incidental...<sup>32</sup>

CS/HB 5611 as amended by the Conference Committee Report establishes the position of Executive Director for the Department of Management Services in s. 20.22, F.S. In addition, it provides an appropriation to re-establish certain management positions within DMS, which positions are subject to Senate confirmation. Those management positions are re-established by name in an unnumbered section of law set to expire June 30, 2012. As such, s. 6, Art. IV of the State Constitution authorizes Senate confirmation of such positions as those positions are established as a designated statutory office in an unnumbered section of law.

#### B. RULE-MAKING AUTHORITY:

The bill requires the Office of the Judges of Compensation Claims to adopt rules regarding workers' compensation claim resolution that require electronic filing and service when deemed appropriate by the Deputy Chief Judge.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>32</sup> *Black's Law Dictionary*, sixth edition, at 1082 (1990).

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

##### Full Appropriations Council on Education and Economic Development

On March 23, 2010, the Full Appropriations Council on Education and Economic Development heard HB 5611 and reported the bill favorably as a council substitute. The bill as filed pertained to repealing the statutes creating the Council on Efficient Government, its duties, and support staff. The bill also repealed certain provisions of statutes creating the Office of Supplier Diversity and the Minority Business Certification Task Force and transferring some of the office's responsibilities to the Division of State Purchasing. Finally, the bill required that the private sector vendor transaction fees collected by the department for use of its statewide electronic procurement and information services system in excess of what is needed to fund legislatively authorized disbursements will be redirected to the General Revenue Fund.

The council substitute removes all statutory amendments pertaining to the Office of Supplier Diversity and the Minority Business Certification Task Force.

##### Floor Activity

On April 1, 2010, Members of the House of Representatives approved CS/HB 5611 for final passage and immediately certified the bill.

On April 6, 2010, Members of the Senate heard CS/HB 5611, adopted a strike-everything amendment to place the bill in a proper posture for conference action, and approved the bill as amended for final passage. The Senate immediately certified the bill as amended.

On April 6, 2010, Members of the House of Representatives refused to concur in the amendment and, on April 19, 2010, a conference committee was appointed.

On April 30, 2010, Members of the House and Senate passed CS/HB 5611 as amended by the Conference Committee Report. In addition to repealing the Council on Efficient Government and redirecting certain vendor transaction fees, the Conference Committee Report:<sup>33</sup>

- Establishes DMS as a Governor and Cabinet agency with the authority to appoint an executive director, upon confirmation by the Senate.
- Provides an appropriation to re-establish certain management positions within DMS, which positions are subject to Senate confirmation.
- Eliminates the State Employee Wellness Council.
- Delays expiration of provisions imposing a \$3 surcharge on certain offenses and traffic violations, the proceeds of which are deposited into the State Agency Law Enforcement Radio System Trust Fund.
- Authorizes DMS to transfer \$320,000 to DEP for the creation of a comprehensive database of state-owned real property.
- Requires electronic filing of information by parties represented by attorneys in hearings held under the Division of Administrative Hearings Adjudication of Disputes Program and in the Workers' Compensation Appeals Program. Parties not represented by attorneys are encouraged, but not required, to file documents electronically.
- Establishes statewide wireless device utilization standards for agencies to use in determining employee assignment of wireless communication devices.
- Requires agencies to procure for wireless devices and services using SUNCOM Network Services.
- Directs DMS to submit a plan to the Legislature to create, administer, and maintain a centralized fleet of all state-owned motor vehicles.
- Directs DMS to coordinate with all state agencies prior to submitting a plan to the Governor, Cabinet, and Legislature to centralize all real estate operations and maintenance.

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<sup>33</sup> Several provisions contained in the Conference Committee Report were found in CS/HB 7163, which was offered by the House as a strike-all amendment to CS/CS/SB 1238. CS/CS/SB 1238 was reported favorably as amended by the House and was immediately certified. The Senate refused to concur in the House strike-all amendment to CS/CS/SB 1238. As such, a conference committee was appointed on April 16, 2010. CS/CS/SB 1238 died in Conference Committee on May 3, 2010.